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No. 88-2090

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1988

DON C. WILSON, et al.,
Petitioners,

v.

GEORGE DEUKMEJIAN, et al.,
Respondents.

On Petition for Writ of Certiorari to the
Court of Appeal of the State of California,
First Appellate District

RESPONDENTS' BRIEF IN OPPOSITION

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19 pp
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QUESTION PRESENTED

Whether the California Court of Appeal properly reversed an ambiguous state trial court ruling which banned double-celling in the general population housing units at California's San Quentin State Prison, because double-celling is not unconstitutional per se and because there was insufficient evidence to link double-celling to an increase in the rate of violence at the entire prison?

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Respondents, George Deukmejian, Governor of the State of California, Joseph Sandoval, Secretary of the California Youth and Adult Corrections Agency, James Rowland, the Director of the California Department of Corrections, and Daniel Vasquez, Warden of California State Prison at San Quentin, respectfully request that this Court deny the petition for writ of

certiorari seeking review of the opinion in this case by the California Court of Appeal, First Appellate District. That opinion was not reported.

STATEMENT OF THE CASE

This action concerns conditions of confinement in the general population housing units at the California State Prison at San Quentin.[1/] The case began in 1981, when general population prisoners filed a class action suit in state superior court seeking improvement in their conditions of confinement.[2/]

On September 13, 1983, following a six

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1. Conditions and practices in the segregated housing units at San Quentin are the subject of another lawsuit. *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986).

2. At that time and at the time of trial, San Quentin housed maximum security, or Level IV (on an increasing scale from Level I to Level IV), inmates in its general population. Today, the general population units contain mostly lower security Level II prisoners.

week court trial, the trial court issued a declaratory judgment and permanent injunction in which it concluded that general population prisoners were subjected to cruel and unusual punishment by their conditions of confinement. The permanent injunction prohibited the confinement of any person in the general population housing units at San Quentin until each unconstitutional condition was eliminated or corrected. The trial court stayed the injunction so long as state prison officials complied to the court's satisfaction with certain express conditions, which included the filing of a plan to eliminate all involuntary double-celling in San Quentin's general population housing units. The trial court also appointed a special master to help review prison officials' plans for compliance and to oversee their implementation of those plans.

The trial court, however, did not stop there. After prison officials submitted their first proposal for implementation of the permanent injunction, the court directed the "monitoring" of all inmates transferred from San Quentin general population housing units to other California prisons and refused to allow any double-celling, absent a riot or other emergency.

In April 1984, prison officials submitted their final plan to implement the trial court's injunction. Following the filing of this plan, the trial court issued two additional orders. The first order, issued on August 30, 1984, approved the operations and structures section of the prison officials' plan, but prohibited all double-celling, whether voluntary or involuntary (not in excess of a limited stay obtained from an appellate court). On September 24, 1984, the trial court issued its second order

provisionally approving the final plan. The second order directed prison officials to report further on efforts to alleviate overcrowding at San Quentin by means other than transferring prisoners and ordered them to conduct "a total analysis" of the existing system for classifying inmates and prisons in California.

The trial court's final order in this case enjoined prison officials from involuntarily transferring any San Quentin general population prisoner to the Correctional Training Facility at Soledad, California, another state prison where conditions in the general population housing units had been challenged by prisoners confined there.

Prison officials appealed all of the trial court's orders. These appeals were consolidated in the state Court of Appeal.

In its decision filed December 12, 1988, the Court of Appeal agreed for the most part with prison officials' challenges to the trial court's rulings (Petition, Appendix C). The Court of Appeal reversed the trial court's declaratory judgment and injunction and subsequent orders to the extent that they held double-celling unconstitutional, prohibited involuntary or voluntary double-celling, required the "monitoring" of transferred inmates, and required prison officials to seek the enactment of legislation and to consider methods other than transferring prisoners to alleviate overcrowding.

The Court of Appeal found the trial court's findings and conclusions about double-celling "somewhat ambiguous." Because the trial court had treated double-celling as a discrete category of the general population prisoners' conditions of confinement, the Court of Appeal

found the trial court held double-celling unconstitutional regardless of any other conditions of cell confinement. Consequently, the Court of Appeal held the trial court erred in finding double-celling to be per se unconstitutional (Petition, Appendix C, pp. C-9-10).

Because the trial court had also mentioned double-celling in its findings about the escalating rate of violence at San Quentin, the Court of Appeal scrutinized the finding that double-celling contributed to the rate of violence at that prison. The Court of Appeal's examination of the record disclosed a lack of evidence supporting the finding that double-celling itself was a cause in the increased rate of violence at San Quentin. For this reason, the Court of Appeal was compelled to reverse the trial court's prohibition on double-celling based on its purported causal relationship to the rate of

violence at San Quentin (Petition, Appendix C, pp. C-10-11).

On January 6, 1989, the Court of Appeal denied the prisoners' petition for rehearing. The California Supreme Court denied their petition for discretionary review on March 23, 1989.

REASONS FOR DENYING THE WRIT

ARGUMENT

I.

AS THE COURT OF APPEAL DECISION FOLLOWED A CONTROLLING DECISION OF THIS COURT, THE PETITION DOES NOT RAISE ANY IMPORTANT, UNRESOLVED ISSUE OF LAW.

The prisoners' petition asserts that the decision of the Court of Appeal about double-celling in the general population housing units at San Quentin State Prison conflicts with and creates a need for clarification of this Court's decision in *Rhodes v. Chapman*, 452 U.S. 337 (1981). The prisoners' assertion is wrong.

In Rhodes, this Court answered in the negative the question whether the housing of two inmates in a single cell was itself cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments.

Id. at 339, 347-348. In that case, there was a lack of evidence linking double-celling with the infliction of unnecessary or wanton pain or showing that it was grossly disproportionate to the severity of the crimes warranting imprisonment. Id. at 348. The Court of Appeal similarly found in this case that there was a lack of evidence to support the trial court's ban on double-celling.

The Court of Appeal used Rhodes to guide its review of the trial court's order prohibiting double-celling in the general population housing units at San Quentin. Recognizing that its "determination of whether the facts found amount to cruel and unusual punishment [was] governed by Rhodes . . . ," the Court of Appeal exhaustively examined that case and applied it to the facts found by the trial court (Petition, Appendix C, pp. C-6-11).

As the Court of Appeal noted, the trial court made findings of fact about four specific categories of conditions of confinement. The trial court expressly made double-celling a discrete category of confinement, separate from the categories labeled other conditions of cell confinement, violence, and food service. Because the trial court treated double-celling as a discrete category, the Court of Appeal found its ruling about double-celling ambiguous. The Court of Appeal, however, gave the trial court the benefit of the doubt and determined that the lower court had found double-celling unconstitutional per se and unconstitutional because of its purported link to an increased rate of violence at San Quentin (Petition, Appendix C, pp. C-9-10).

The Court of Appeal then concluded that the trial court erred in holding that double-celling was per

se unconstitutional (Petition, Appendix C., p. C-10). This conclusion under the Eighth Amendment was compelled by Rhodes. No conflict exists between the Court of Appeal's ruling in this respect and the controlling decision of this Court.

The Court of Appeal also ruled that there was insufficient evidence to support the trial court's finding that double-celling at San Quentin caused an increase in the rate of violence there. Consequently, the Court of Appeal held that the trial court's ban on double-celling could not be sustained on this factual basis (Petition, Appendix C, pp. C-10-11). The appellate court's ruling depended solely on the facts contained in the record in this case. Its ruling on the unique facts contained in the extensive trial court record does not warrant review by this Court.

The thrust of the prisoners' claim in their petition is that the state Court of Appeal misinterpreted the trial court's findings and legal conclusions. They say that the trial court, not the appellate court, correctly applied the teachings of Rhodes to the facts in this case. In essence, the prisoners simply quarrel with the appellate court's application of Rhodes to a particular set of facts. Their complaints about the application of Rhodes to the facts in this case do not establish any conflict between the Court of Appeal decision and Rhodes. For this reason, the prisoners' petition does not present any issue worthy of, or entitled to, review by this Court.

Moreover, the prisoners' contention that lower courts need additional guidance from this Court in the area of prison conditions of confinement litigation is not well-founded as an abstract principle. Their

contention is even less well-founded in the context of this case.

This Court has already provided a Rhodes map to aid lower courts in their resolutions of disputes involving prison conditions, including double-celling and overcrowding. A legion of lower federal and state trial and appellate courts have added detail to that map in the past eight years. Any trial court deciding a challenge to prison conditions today has abundant authority to direct its course. The trial court in this case, of course, also benefits from the direction given by its Court of Appeal. No further direction from this Court is required.

CONCLUSION

For these reasons, the prisoners' petition for writ of certiorari should be denied.

DATED: July 26, 1989

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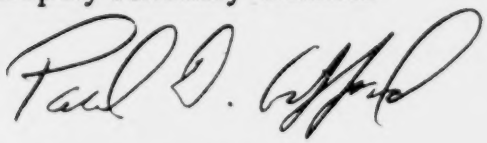

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OCTOBER TERM, 1988

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CERTIFICATE OF SERVICE

I, Paul D. Gifford, a member of the Bar of this Court, hereby certify that on this 1st day of August, 1989, three (3) copies of the Respondents' Brief in Opposition to the Petition for Writ of Certiorari to the Court of Appeal for the State of California, First Appellate District, in the above-entitled case, were mailed, first class postage prepaid, in the United States mail to the following counsels for petitioners:

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I further certify that all parties required to be served have been served.

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